

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LAWRENCE CRISCIONE
1412 Dial Court
Springfield, IL 62704

Plaintiff,

v.

U.S. NUCLEAR REGULATORY
COMMISSION
11545 Rockville Pike
Rockville, MD 20852

Defendant.

Civil Action No.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, and the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. § 552(a) challenging the failure of the U.S. Nuclear Regulatory Commission ("NRC") to release records pertaining to and requested by plaintiff.

2. This case seeks declaratory relief that the NRC is in violation of the FOIA and Privacy Act for failing to release records responsive to plaintiff's request for records and injunctive relief ordering defendant NRC to immediately release the requested records in their entirety.

JURISDICTION AND VENUE

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the NRC pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552a(g). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552a(g)(5).

PARTIES

4. Lawrence Criscione is an individual employed by the NRC. Mr. Criscione is a resident of Springfield, Illinois.

5. Defendant NRC is an agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 702. The NRC is the federal agency with possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request.

FACTS UNDERLYING PLAINTIFF'S PRAYER FOR RELIEF

6. On January 17, 2013, Lawrence Criscione was interrogated by special agents from the NRC's Office of Inspector General concerning a release of NRC documents he had given to the U.S. Special Counsel and select committees in the House of Representatives and the Senate. During the interview, Mr. Criscione was informed by Special Agents William Walls and Special Agent Daniel Esmond that he would be able to review the transcript of the interview for accuracy. However, at no time since the interview has he been provided the opportunity to conduct this review.

7. By e-mail dated March 3, 2013, Lawrence Criscione submitted a FOIA/Privacy Act request for "[a] copy of the digital or tape recording of my 2013-01-17 interrogation by Special Agents William Walls and Daniel Esmond concerning OIG Investigation 2013-001."

8. By letter dated March 4, 2013, the NRC FOIA Office acknowledged Mr. Criscione's request. The request was assigned case number FOIA/PA-2013-00153.

9. By letter dated March 14, 2013, the NRC denied Mr. Criscione's request pursuant to FOIA Exemption 7(A). No Privacy Act exemption was provided. Mr. Criscione was given administrative appeals rights.

10. By letter dated March 15, 2013, Mr. Criscione submitted an administrative appeal of the NRC denial. Mr. Criscione noted that he made a Privacy Act request not a FOIA request as he sought records pertaining to the interrogation of him.

11. By letter dated March 18, 2013, the NRC acknowledged Mr. Criscione's administrative appeal and assigned it FOIA/PA-2013-0008A.

12. By letter dated April 2, 2013, Hubert Bell, Inspector General of the NRC denied Mr. Criscione's appeal. Initially, Mr. Bell stated that the records are exempt pursuant to Exemption (j)(2) of the Privacy Act. Mr. Bell then stated that the records are exempt pursuant to Exemption (7)(A) of the FOIA.

13. Mr. Criscione's own statements to NRC OIG Special Agents are not withholdable from him pursuant to Exemption 7(A) of the FOIA and have been wrongfully withheld from him.

CLAIM ONE

(Failure to Produce Records Under the FOIA)

14. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

15. Plaintiff properly asked for records within the custody and control of the NRC.

16. Plaintiff is entitled by law to access to the records requested under the Privacy Act and FOIA, unless defendant makes an explicit and justified statutory exemption claim.

17. Plaintiff has exhausted administrative remedies with respect to the NRC's wrongful withholding of the requested records.

18. Plaintiff is entitled to injunctive and declaratory relief with respect to the release and disclosure of the requested documents.

CLAIM TWO

19. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

20. Plaintiff is entitled by law to access the records requested under the Privacy Act, 5 U.S.C. § 552a.

21. Defendant NRC is in violation of the Privacy Act, 5 U.S.C. § 552a, by failing to fully and lawfully fulfill Plaintiff's March 3, 2013, request for records pertaining to his interview of January 3, 2013.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court:

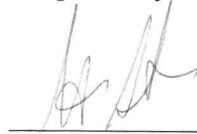
(1) Issue a declaration that defendant NRC has violated the FOIA by failing to lawfully satisfy plaintiff's FOIA/Privacy Act request of March 3, 2013;

(2) Order defendant to disclose the requested records and make copies available to plaintiff at no cost to plaintiff;

(3) Award plaintiff reasonable attorney fees and litigation costs in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

(4) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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Dated: June 21, 2013

Attorney for Plaintiff